



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,620	12/21/2001	Daniela Giacchetti	05725.0981-00	3957
7590	04/30/2004		EXAMINER	
FINNEGAN, HENDERSON, FARABOW GARRETT & DUNNER, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			BORISSOV, IGOR N	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/024,620	GIACCHETTI ET AL.
	Examiner	Art Unit
	Igor Borissov	3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 December 2001.  
 2a) This action is **FINAL**.                                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-43 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-43 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1-21** are rejected under 35 U.S.C. 101 because the claimed method for does not recite a limitation in the technological arts. The independently claimed steps of: *maintaining beauty information in a data structure; receiving personal information about a subject; selecting for presentation to the subject at least some beauty information maintained in the data structure based on the received information; presenting to the subject an image of a virtual beauty consultant; and causing the image of the consultant to present to the subject the beauty information selected for presentation* are abstract ideas which can be performed mentally without interaction of a physical structure. The method steps: *presenting to the subject an image of a virtual beauty consultant; and causing the image of the consultant to present to the subject the beauty information* may be understood as merely getting an assistance in a beauty store. However, the claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman, 61 USPQ2d 1665, 1671 (Bd. Pat. App. & Inter. 2001)*).

Because the independently claimed invention is directed to an abstract idea which does not recite a limitation in the technological arts, those claims and claims depending from them, are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-14, 16-19, 22-25, 27-30 and 33-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. (WO 01/18674 A2) in view of Rosenblatt et al. (US 2002/0007276).**

Maloney et al. (hereinafter Maloney) teaches a method and system for providing a customized product combination to a consumer, comprising:

*Independent Claims.*

**Claim 1, 22 and 33.** Maintaining beauty information in a data structure (page 7, lines 9-16); receiving personal information about a subject (page 6, line 29); selecting and presenting to the subject at least some beauty information maintained in the data structure based on the received information (queries) (page 7, lines 11-16, 28-29).

Maloney does not teach presenting an image of a virtual beauty consultant; and causing the image of the consultant to present to the subject the beauty information selected for presentation.

Rosenblatt et al. (hereinafter Rosenblatt) teaches a method and system for virtual representatives adapted to be used as communications tools for Web retailers in customer-support applications, comprising a three-dimensional, photo-realistic, voice-enabled computer animation serving as a “virtual representative” [0007]; [0041].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney to include presenting an image of a virtual beauty consultant to the subject for presenting said beauty information, because it would attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby increase revenue.

*Dependent claims.*

**Claims 2 and 40.** Said method and system, wherein beauty information includes personal queries (page 7, lines 28-29).

**Claim 3.** Said method, wherein beauty information includes at least one of a product recommendation, a diagnostic recommendation, a cosmetic usage recommendation, a prediction, a beauty profile, a preventative measure, and a remedial measure (page 7, lines 30-31).

**Claims 4 and 40-41.** Said method and system, comprising recording answers to the queries and asking the user additional queries incorporating into the additional queries information reflective of recorded answers (page 18, lines 1-9).

**Claims 5 and 6.** See claim 22.

**Claims 7-8, 12, 23, 29, 34 and 39.** Said method and system, wherein the beauty information is stored in a data structure connected to the Internet, and wherein the method further comprises providing the subject with access to the data structure over the Internet (page 16, lines 20-34; page 18, lines 21-34).

**Claim 9.** See claim 22.

**Claim 10.** Said method, wherein receiving personal information includes obtaining the information from the subject via an audio capture device (page 6, lines 30-31).

**Claim 11 and 13.** See claim 1.

**Claim 14, 27 and 38.** See claim 1.

**Claims 16-17.** Said method, wherein presenting to the subject an image of a virtual beauty consultant involves allowing the subject to choose an image to be presented (Rosenblatt; [0008]).

**Claims 18, 24 and 35.** Said method, wherein presenting to the subject includes causing a synthesized human voice to be audibly projected through an audio output device (Rosenblatt; [0026]).

**Claim 19, 27 and 36.** Said method, wherein presenting includes causing a pre-recorded human voice to be audibly projected to the user (Rosenblatt [0028]; [0031]; [0036]).

**Claim 28.** See claim 22.

**Claim 30.** Identifying to the subject at least one beauty test (page 11, lines 6-23). Providing trained specialists for performing said test obviously indicates guidance in conducting said test.

**Claim 37.** See **claim 22.**

**Dependent claims 15, 20-21, 26, 31-32 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney and Rosenblatt in view of Orpaz et al. (WO 02/05249).**

**Claims 15 and 26.** Maloney and Rosenblatt teach all the limitations of **claims 15 and 26**, including that photographs are used in creation of said “virtual representative”, except specifically teaching that said pre-recorded human image is an image of an actual human being.

Orpaz et al. (hereinafter Orpaz) teaches make-up and fashion accessory display and marketing method and system, wherein an image of a subject is recorded (page 3, lines 23-26), modified with suggested beauty product, and displayed back to the subject (page 5, lines 18-25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney and Rosenblatt to include that said pre-recorded human image is an image of an actual human being, because it would allow to closely simulate the results of using said offered beauty product, thereby make it more attractive to customers.

**Claims 20-21 and 31-32.** See **claims 15 and 26.**

**Claims 42.** Said system, configured to cause a second human image to appear to the subject through the terminal (Orpaz; page 18, lines 19-21).

**Claim 43.** See **claim 15.**

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308-2702.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***  
***Washington D.C. 20231***

or faxed to:

**(703) 872-9306** [Official communications; including After Final communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

JP

*jlw*  
JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600